

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION)) MDL NO. 1456) Civil Action No. 01-12257-PBS) Subcategory Case No. 03-10643
THIS DOCUMENT RELATES TO: <i>The City of New York, et al.</i> v. <i>Abbott Laboratories, et al.</i>)) Judge Patti B. Saris)) Magistrate Judge Bowler)))

**PLAINTIFFS' REVISED CONSENTED-TO MOTION FOR LEAVE TO FILE REPLY
IN FURTHER SUPPORT OF PLAINTIFFS' MOTION TO COMPEL DISCOVERY
FROM DEFENDANT MERCK & CO., INC.**

Pursuant to Local Rule 7.1(B)(3), plaintiffs, the City of New York and New York Counties, hereby file this revised motion for leave to file a reply in further support of plaintiffs' Motion to Compel Discovery from Defendant Merck & Co., Inc. (hereinafter referred to as "Merck") so that plaintiffs' reply will be due October 23, 2009 rather than October 16, 2009. In support of this motion, plaintiffs state the following:

1. On September 4, 2009, plaintiffs filed their Motion to Compel Discovery from Defendant Merck. *See* Docket. No. 6487; Sub-docket. No. 158.
2. Pursuant to L.R. 37, defendant Merck's response was due within 14 days thereafter, September 28, 2009.
3. On September 17, 2009, defendant Merck filed an Unopposed Motion for Enlargement of Time to respond by October 5, 2009. *See* Docket. No. 6509; Sub-docket. No. 165.
4. On October 5, 2009, defendant Merck filed its Opposition to Plaintiffs' Motion to Compel Discovery from Defendant Merck. *See* Docket. No. 6572; Sub-docket. No. 178.

5. Defendant Merck consented to Plaintiffs' Motion for Leave to File a Reply in Further Support of Plaintiffs' Motion to Compel Discovery from Defendant Merck by October 16, 2009.

6. On October 7, 2009, plaintiffs filed their Consented-To Motion for Leave to File Reply in Further Support of Plaintiffs' Motion to Compel Discovery from Defendant Merck & Co., Inc. *See* Docket No. 6578, Sub-docket No. 171.

7. On October 14, 2009, Merck consented to plaintiffs' request for a one-week extension to file their reply by October 23, 2009, rather than October 16, 2009.

For the foregoing reasons, plaintiffs respectfully request that this motion be granted. A proposed order is attached hereto.

Dated: October 16, 2009

Respectfully submitted,

**City of New York and New York Counties in
MDL 1456 except Nassau and Orange, by**

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Certification Pursuant to Local Rule 7.1

The undersigned counsel certifies pursuant to Local Rule 7.1(a)(2) that she conferred with counsel for defendant and counsel for defendant has consented to the filing of this motion.

Dated: October 16, 2009

/s/ Joanne M. Cicala
Joanne M. Cicala

CERTIFICATE OF SERVICE

I, Kathryn Allen, hereby certify that on the 16th day of October, 2009, I caused a true and correct copy of the above Revised Consented-To Motion for Leave to File Reply in Support of Plaintiffs' Motion to Compel Discovery from Defendant Merck & Co., Inc., to be delivered to counsel of record for defendants by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL No. 1456.

Dated: October 16, 2009

/s/ Kathryn B. Allen
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<i>The City of New York, et al.</i>)	
)	Magistrate Judge Bowler
v.)	
)	
<i>Abbott Laboratories, et al.</i>)	

**[PROPOSED] ORDER GRANTING PLAINTIFFS' REVISED CONSENTED-TO
MOTION FOR LEAVE TO FILE REPLY IN FURTHER SUPPORT OF PLAINTIFFS'
MOTION TO COMPEL DISCOVERY FROM DEFENDANT MERCK & CO., INC.**

IT IS HEREBY ORDERED THAT the City of New York and New York Counties shall be granted leave to file their Reply in Further Support of Plaintiffs' Motion to Compel Discovery from Defendant Merck & Co., Inc., by October 23, 2009.

Dated: October __, 2009

Hon. Marianne B. Bowler
United States Magistrate Judge